

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

NATHANIEL L. GAITHER)
)
)
v.) No. 1:04-cv-21 / 1:01-cr-14
) Edgar
UNITED STATES OF AMERICA)

ORDER

In accordance with the accompanying memorandum, the Court **GRANTS** Nathaniel L. Gaither's motions to amend his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. Nos. 2, 8, 10], the government's motion for an extension of time to respond [Doc. No. 11], and Gaither's motions for an extension of time to reply [Doc. Nos. 9, 14]. However, for the reasons expressed in the accompanying memorandum, Gaither's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 1] is **DENIED**. Gaither's motion to appoint counsel [Doc. No. 12] is also **DENIED**. This action for post-conviction relief is **DISMISSED**.

Should Gaither file a timely notice of an appeal from this order, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** since he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); FED. R. APP. P. 22(b).

In addition, the Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24 of the FEDERAL RULES OF APPELLATE PROCEDURE and hereby **CERTIFIES** that any

appeal from this action would not be taken in good faith and would be totally frivolous.
Therefore, any application by Gaither for leave to proceed *in forma pauperis* on appeal is
DENIED. 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24.

SO ORDERED.

ENTER this *23rd day of May, 2005.*

/s/ R. Allan Edgar
R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE